

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

JOSE PEREIRA,

Plaintiff,

-against-

MICHAEL ASTRUE, Commissioner
of Social Security

Defendant.

-----X

ORDER

Civil Action No. 09-1024
(DRH)

APPEARANCES:

For Plaintiff:

Jeffrey Delott, Esq.
366 North Broadway, Suite 410
Jericho, NY 11753

For Defendant:

Benton J. Campbell
United States Attorney for the Eastern District of New York
610 Federal Plaza,
Central Islip, NY 11722
By: Robert B. Kambic, AUSA

HURLEY, Senior District Judge:

Plaintiff, Jose Pereira, ("Plaintiff") commenced this action pursuant to 42 U.S.C. § 405(g) seeking judicial review of a final decision by the Commissioner of Social Security (the "Commissioner" or "Defendant") which denied his claim for disability benefits. By Memorandum & Order dated May 25, 2010, the Court reversed the decision of the Commissioner and remanded the matter for further proceedings pursuant to the fourth sentence of 42 U.S.C. § 405(g). Judgment was entered on May 26, 2010 and thereafter Plaintiff timely moved for attorneys' fees pursuant to the Equal Access to Justice Act. By Order dated June 28, 2010, Plaintiff's application was referred to Magistrate Judge Wall for Report and

Recommendation. On September 9, 2010 Judge Wall issued a Report and Recommendation that Plaintiff be awarded attorneys' fees for 45.1 hours of work, that plaintiff be directed to recalculate the amounts he is due using separate rates for 2009 and 2010, and that plaintiff be awarded \$566.34 in costs. More than ten days have elapsed since service of the Report and Recommendation, and neither party has filed any objections to it.

Pursuant to 28 U.S.C. §636(b) and Fed. R. Civ. P. 72, this Court has reviewed the Report and Recommendation for clear error, and finding none, now concurs in both its reasoning and result. Accordingly, this Court adopts the September 9, 2010 Report and Recommendation of Judge Wall as if set forth herein. The Court therefore directs that Plaintiff file within seven (7) days of the date hereof an affidavit recalculating in accordance with Judge Wall's Report and Recommendation the amounts due for 45.1 hours of work using separate rates for 2009 and 2010. Upon receipt of said affidavit and in the absence of any objection thereto by Defendant, which objection must be filed within five (5) days of the filing of the affidavit, an order setting forth the total amount recoverable under the Equal Access to Justice Act shall be entered.

SO ORDERED.

Dated: Central Islip, New York
September 24, 2010

/s /
Denis R. Hurley
United States District Judge